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March 23, 2023

Hon. Jennifer L. Rochon
United States District Judge
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007

Re: *Penna et al. v. Banks et al.* 22-CV-9004 (JLR)

Your Honor:

I am an Assistant Corporation Counsel in the office of the Corporation Counsel assigned to represent Defendants in the above-referenced action. I write for both parties with an update on Defendants' planned cross-motion for summary judgment and a proposal on how to proceed in this action.

The motion for summary judgment and planned cross-motion concern whether Plaintiffs are entitled to direct payment to the private school, the International Institute for the Brain ("iBrain"), for educational services attended by Plaintiff Student during the 2021-2022 school year. That motion and cross-motion were based on Plaintiffs' challenge to the administrative decision of the State Review Officer, who found that there was no entitlement to such direct payment.

Since our last letter, dated March 17, 2023 [Dkt. No. 21], Plaintiffs have confirmed and the parties agree that educational expenses for Plaintiff Student were paid directly to iBrain for educational services the 2021-2022 School Year pursuant to pendency (in addition, although not a subject of the lawsuit, transportation services for Plaintiff Student for the 2021-2022 School Year were paid directly to the transportation provider). As a result, the parties agree that motion practice is no longer necessary.

The only remaining issue in this action is that of attorneys' fees. The parties plan to have discussions on this issue with the hope that the issue may be resolved without motion

practice, and respectfully request six weeks to do so. The parties would then submit a joint status letter by May 4, 2023, updating the Court on the status of the attorneys' fees issue.

We thank the Court for its attention to this issue.

Sincerely yours,


/s/ Marilyn Richter
Marilyn Richter
Assistant Corporation Counsel

In light of the parties' letter, the motion for summary judgment (ECF No. 19) is denied as moot.

The parties shall submit a joint status letter by **May 4, 2023**.

Dated: March 26, 2023
New York, New York

SO ORDERED.


JENNIFER L. ROCHON
United States District Judge